

**REMARKS**

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

**Status of Claims:**

No claims are currently being canceled.

“New” Claim 3 is currently being amended for the sake of clarity and to improve wording, but not in light of the prior art. Indeed, the claim is not be substantively narrowed. In particular, the last wherein clause has been changed from the previous version of this claim, to recite: “wherein the pivotable device casing is configured to be pivoted away from the main device casing so that a user’s head is positioned at least a predetermined distance away from the antenna of the main device casing when the user’s head is positioned against the speaker of the pivotable device casing.” These changes are fully supported by the specification; for example, Figures 42A and 42B of the drawings, and page 37, lines 3-14 of the specification.

Claims 17-26 are currently being added. These new claims are supported by Figures 42A and 42B, and pages 37 and 38 of the specification.

This amendment adds and amends claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-19 are now pending in this application.

**Reissue Declaration Objection:**

In the Office Action, claims 3-16 were rejected as being based upon a defective reissue Declaration, in which the Office Action asserts that the Declaration does not contain a statement that all errors which are being corrected in the reissue application up to the time of the signing of the Declaration arose without deceptive intention on the part of the Applicant.

Applicants respectfully traverse this rejection. In particular, paragraph 11 on page 5 of the reissue Declaration states that “All errors corrected in this reissue application arose without deceptive intention on the part of the applicants.” By signing and dating the reissue declaration, it is quite clear that the statement regarding the lack of deceptive intent applies up to the signing of the declaration. Thus, the supposedly missing statement in the Declaration is in fact found in the Declaration.

Reconsideration and withdrawal of this rejection is respectfully requested.

**Surrender of Original Patent:**

In numbered paragraph 3) of the Office Action, it states that the original patent must be received, or a statement as to loss or inaccessibility to it must be received, before this reissue application can be allowed. Further to the Offer of Surrender that has already been made, Applicants will submit either the original patent or a statement as to its loss or inaccessibility upon indication of allowance of this application.

**Claim Rejections – Prior Art:**

In the Office Action, claims 3-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,018,998 to Wegner in view of U.S. Patent No. 5,335,368 to Tamura. This rejection is traversed with respect to presently pending claims 3-16, for at least the reasons given below.

**Independent Claim 3:**

Namely, in column 4, lines 18-23, Wegner merely describes that a device adapted to a walkie-talkie has an antenna and the requisite parts for two way radio communication. Wegner indicates that the necessary electronics will be included in a lower casing part. Nowhere does Wegner disclose or suggest that the antenna is to be included in the lower casing part. As well understood in the art, and apparently recognized in the Office Action itself, the “necessary electronics” do not relate to the antenna, but rather to tiny electrical components (e.g., transistors, capacitors, diodes, etc.) used in two way radio communication.

On the other hand, Tamura discloses a portable radio apparatus in which both the transmitting and receiving circuit and the antenna are arranged on the upper casing.

Nowhere, however, does Tamura state any requirement that both the transmitting and receiving circuit and the antenna should be arranged on the same casing. Tamura merely places the antenna in the traditional location directly adjacent to the ear speaker and part of the same casing as the ear speaker. Applying that teaching to Wegner, the person of ordinary skill in the art would simply place the antenna together with the speaker 30 in the upper casing 21 of Wegner's phone. As understood, Tamura does not disclose or suggest that both the transmitting and receiving circuit and the antenna can be arranged on a same lower casing, where the microphone exists. In fact, Tamura fails to disclose or suggest any specific arrangement of the antenna on the lower casing, together with the microphone, and instead suggests otherwise as outlined above.

Consequently, even if Wegner and Tamura could be properly combined, the combination of Wegner and Tamura fails to teach or suggest a specific arrangement of an antenna in a radio communication device such that the pivotable device casing (e.g., upper casing) is configured to be pivoted away from the main device casing (e.g., lower casing) so that a user's head is positioned at least a predetermined distance away from the antenna of the main device casing (e.g., lower casing) when the user's head is positioned against the speaker of the pivotable device casing (e.g., upper casing), as recited in claim 3. Rather, the combination of Wegner and Tamura simply provides a device where the antenna is right next to the speaker where the user's head will be.

In addition, it should be noted that the structure of claim 3 is specifically designed to reduce the influence of antenna radiation on the user while the user operates the device, by specifically arranging the antenna such that the head of the user is distanced from the antenna and the radiation field of the antenna points away from the head of the user (see page 37, lines 3-14 of the present specification).

In this regard, both Wegner and Tamura are not at all concerned with such a reduction of the influence of the user on the antenna characteristic, i.e., neither reference recognizes the problem being addressed by the claimed structure of present claim 3. In fact, Tamura's device, which has the antenna on the upper casing, cannot resolve the problem of reducing the influence antenna radiation on the user, as it results in the same structure addressed in

connection with Fig. 41A of the present specification. That is, Tamura presents precisely the problematic structure addressed by the claimed structure of present claim 3.

Consequently, there is no sound motivation for extracting only a partial feature of arranging both the transmitting and receiving circuit and the antenna on the same casing from Tamura and combining that isolated feature with Wegner. This is picking and choosing features without consideration to other features and without clear motivation or recognition of the problem being addressed by the Applicants.

Dependent Claims 4-16:

Dependent claims 4-16 depend from claim 3, and therefore are allowable based on such dependency. Thus, Applicants need not address the specific comments in the Office Action directed to those claims.

New Claims 17-26:

A combination of Wegner and Tamura also fails to teach or suggest a specific arrangement of the antenna in a radio communication device such that the second casing (lower casing) has the antenna on an upper side and the microphone on a lower side when the first casing (upper casing) is opened from the second casing (lower casing) by using the pivot mechanism, as explicitly recited in new claim 17.

A combination of Wegner and Tamura also fails to disclose or suggest a specific arrangement of the antenna in a radio communication device such that the radio communication device can be set in an operational configuration by pivoting the first casing (upper casing) away from the second casing (lower casing) such that the antenna is projected along a plane defined by the second casing (lower casing) which intersects with a plane defined by the first casing (upper casing) at an angle, as explicitly recited in new claim 18.

Furthermore, with respect to claim 19, that claim recites that the pivotable mechanism is provided at a mid-length region of the main device casing. See, for example, the disposition of element 127 in Figures 42A and 42B of the drawings. In Wegner and Tamura, on the other hand, the pivotable mechanism is provided at end-length positions of the respective top and bottom casings. See hinge 30 in Figure 1 of Tamura and hinge 3 in Figure 2 of Wegner, for example.

With respect to new independent claim 20, that claim recites a radio communication device, in which, in a pivoted operational position, the second device casing is pivoted away from the first device casing such that a front surface of the second device casing is not parallel to a direction of the antenna. Such features are not taught or suggested by the cited art of record.

Claims 23-26 depend either directly or indirectly from claim 20, and are patentable due to the features recited in claim 20, as well as for the specific features recited in these dependent claims.

As discussed above, it is believed that claims 3-26 are patentably distinct over the prior art of record.

**Conclusion:**

Since all of the issues raised in the Office Action have been addressed in this Amendment and Reply, Applicants believe that the present application is now in condition for allowance, and an early indication of allowance is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date April 6, 2005

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